

JAN 19 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUAN REYES-JUNES,

Defendant - Appellant.

No. 04-50527

D.C. No. CR-04-00499-AHM

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
A. Howard Matz, District Judge, Presiding

Submitted January 9, 2006^{**}

Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Juan Reyes-Junes appeals the 41-month sentence imposed following his guilty-plea conviction for illegal reentry following deportation in violation of 8

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742.

Reyes-Junes' only contention on appeal is that the district court erred by applying the Sentencing Guidelines as mandatory. Because we cannot reliably determine from the record whether any error in the imposition of the sentence under the then-mandatory Sentencing Guidelines was harmless, we remand to the sentencing court to answer that question, and to proceed pursuant to *United States v. Ameline*, 409 F.3d 1073, 1084 (9th Cir. 2005) (en banc). See *United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005).

REMANDED.